



Dora

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DORA Releases 2012 Sunset Reviews Ensuring Consumer Protection and Government Accountability

DENVER – Barbara J. Kelley, Executive Director of the Colorado Department of Regulatory Agencies (DORA), announces today the release of 24 sunset reviews, which provide recommendations to the Colorado General Assembly to repeal unnecessary regulation in state government programs or divisions, and enhance the performance of continued programs. “We take our charge to ensure Government programs are necessary and efficient very seriously. The Sunset review process fits hand in glove with the Governor’s mandate to make government more efficient, more effective and more elegant,” said Kelley.

This year, DORA conducted sunset reviews throughout state government including programs and boards within the Departments of Labor and Employment, Natural Resources, Public Health and Environment, Revenue and DORA. The legislature determines when and which programs are reviewed.

Colorado was the first state in the country to pass a regulatory sunset law in 1976. The sunset process was one of the first accountability tools designed to examine the need for and impact of state regulation on the economy and the effectiveness of state regulation in protecting consumers.

Bruce Harrelson directs DORA’s Office of Policy, Research and Regulatory Reform, which includes a team of analysts who conduct the sunset reviews. “The criteria and timeline for sunset reviews are created in Colorado law. We strive to make the process as inclusive as possible, engaging consumers, businesses and interest groups into the discussion,” said Harrelson.

Following are short excerpts of DORA’s 2012 recommendations with the complete sunset reviews available online at www.askdora.colorado.gov.

Acupuncturist Licensing Program

Continue the regulation of acupuncturists for nine years, until 2022.

There are few complications associated with acupuncture, but there are significant potential risks. Under the current regulatory regime, prospective acupuncturists are required to complete an education program and obtain national certification (which requires passing three examinations) before applying for a Colorado license. These requirements assure that entry-level acupuncturists possess the skills and knowledge to practice safely, thereby protecting the public. Therefore, the General Assembly should continue the regulation of acupuncturists for nine years, until 2022.

Repeal the words “traditional” and “oriental” from the definition of the practice of acupuncture in reference to adjunctive therapies.

While the practice of acupuncture remains firmly grounded in tradition, the modalities and techniques used by modern acupuncturists would likely be unrecognizable to its original practitioners. Accordingly, the definition of the “practice of acupuncture” should be revised to simply refer to “adjunctive therapies within the scope of acupuncture” rather than “traditional oriental adjunctive therapies.” Making this change would not change or

expand acupuncturists' scope of practice. Rather, the revised definition would provide a more accurate reflection of acupuncture scope of practice in the 21st century and allow for the continuing evolution of the profession.

All-Payer Health Claims Database Advisory Committee

Sunset the All-Payer Health Claims Database Advisory Committee (APHCD Advisory Committee).

The APHCD Advisory Committee has fulfilled its statutory mandate to make recommendations regarding the creation of the framework and implementation plan for the All-Payer Health Claims Database (APHCD). APHCD Advisory Committee members have provided invaluable guidance, with the result that Colorado's APHCD is now funded, accepting data in agreed-upon formats from payers, and will begin generating its first public reports by the end of 2012. The APHCD can call upon APHCD Advisory Committee members in an informal capacity going forward without the need for statutory oversight.

Banking Board and the Division of Banking

Continue the Banking Board (Board) and the Division of Banking (Division) for 11 years, until 2024.

The purpose of the Banking Code is to provide protection to consumers. One of the most important regulatory requirements for banks and trust companies is the examination process. The examinations vary in scope and frequency (e.g., safety and soundness examinations), and they ensure, to the extent practicable, that banks and trust companies are in sound financial condition to provide services to consumers as well as protect their assets. The absence of regulatory oversight of banks and trust companies in Colorado would likely compromise consumer protection as well as Colorado's short-term and long-term economic stability. As such, the General Assembly should continue the Board and the Division for 11 years, until 2024.

Repeal the regulation of industrial banks from the Banking Code.

Authorization for state chartered industrial banks has been in existence in Colorado since 1923. Originally, they served as finance companies specializing in consumer loans and second mortgages. In the past, industrial banks served an important purpose in providing loans to consumers. However, the industry has changed over the years and the scope of banking products and services that may be offered by industrial banks now closely matches those that can be offered by commercial banks. There are no longer any state chartered industrial banks in Colorado. Industrial banks have become obsolete and the statutory provisions that authorize them should be repealed from the Banking Code.

Board of Real Estate Appraisers

Continue the Board of Real Estate Appraisers (Board) for nine years, until 2022.

The Board was created to comply with federal law, and it protects the public by ensuring that appraisers are qualified to appraise real estate. It also protects the public by removing unqualified or incompetent appraisers from the market.

Create a certification specific to tax appraisers.

The federal law that requires the regulation of real estate appraisers, mandates the education, examination, and experience requirements that are relevant to real estate appraisers who appraise property for the purpose of mortgage lending, not for ad valorem taxation. The daily tasks of the two types of appraisers are distinctly different. Therefore, a separate certification for tax appraisers may be better suited to ensuring that tax appraisers have the necessary skills and knowledge germane to appraising real property for tax assessment purposes.

Colorado Asbestos Control Act

Continue the Colorado Asbestos Control Act (Act) for nine years, until 2022.

The public interest and the goal of the Act is very clearly laid out by the General Assembly in the Act; the purpose is to "minimize the risk of release of asbestos." The U.S. Environmental Protection Agency labeled asbestos a hazardous material four decades ago. Virtually no level of asbestos exposure is safe, and it is still widely found in buildings today. Exposure in schools prompted the 1986 passage of the federal Asbestos Hazard Emergency Response Act (AHERA). AHERA is the underpinning of the asbestos abatement program adopted in Colorado and implemented by the Colorado Department of Public Health and Environment.

Raise awareness concerning asbestos in buildings with additional disclosures.

The Act regulates "the wrecking or removal of structural members that contain friable asbestos containing materials (ACM). Any renovation or demolition which may disturb greater than the trigger levels of ACM must be inspected to determine if abatement is necessary. The greatest challenge to implementation of the Act is that the general public is unaware of the extent to which ACM exists in everyday life. Requiring that building permit

applicants disclose if an asbestos inspection has occurred, raises awareness because it requires the applicant to think about the possibility that there are ACM present.

Colorado Coordination Council

Sunset the Colorado Coordination Council (Council).

The goals of the Council were laudable--to create a "one stop shop" for the permitting of natural resources development projects. However, the Council, like the Colorado Joint Review Process that preceded it, has not been used. A considerable level of coordination exists outside of the formal framework of the Council. Therefore, the Council should be sunset because it has not been used and it is not necessary.

Colorado Division of Gaming

Continue the Division of Gaming (Division) for nine years, until 2022.

The Division enforces the Limited Gaming Control Commission's rules, most of which are designed to protect players from unscrupulous casinos or to require accounting and reporting systems that help to ensure that gaming taxes are properly paid and calculated.

Amend the definition of gaming device to accommodate advances in technology.

The Limited Gaming Act of 1991 defines gaming device by providing a list of physical objects, such as dice, cards, poker tables and the like. However, technology continues to advance and electronic versions of table games and cards, for example, are now available but cannot be used in Colorado because of the limits imposed by the definition of gaming device.

Colorado Money Transmitters Act

Continue the Colorado Money Transmitters Act (Act) for 11 years, until 2024.

The purpose of the Act is to provide consumer protection in money transfer transactions from licensed money transmitters. Money transmitters provide a mechanism for individuals and businesses to transmit money to one another. In order to provide consumer protection, the Act requires each licensed money transmitter to obtain a surety bond, generally for \$1 million. Licensed money transmitters are also required to undergo examinations by Division of Banking (Division) staff as well as provide financial statements. These regulatory elements offer oversight sufficient to insulate consumers from harm. This is evidenced by the relatively few enforcement actions imposed on licensed money transmitters in fiscal years 06-07 through 10-11. As such, the General Assembly should continue the Act for 11 years, until 2024.

Clarify in the Act that the Banking Board (Board) has the authority to investigate any person(s) believed to be engaging in money transmission without a license.

In order to provide money transmitter services to consumers, the Act requires a person to obtain a license from the Division of Banking. The Act, however, does not clearly delineate that the Board has the authority to investigate a person who is suspected of operating as a money transmitter without a license. Therefore, the General Assembly should clarify that the Board has the explicit authority to investigate a person who may be operating as a money transmitter without a license.

Colorado Work Share Program

Continue the Colorado Work Share Program (Program) indefinitely.

Participating in the Program cannot save every business or prevent every layoff. However, it provides a valuable alternative for employers weathering difficult economic times. Under the Program, employees may avoid the dramatic reduction in income and loss of benefits that come with layoffs and employers may retain a skilled workforce during a temporary downturn in business. Therefore, the Program serves to protect the public welfare and should be continued. In order to qualify for the federal grants that will be available under the federal Layoff Prevention Act of 2012 (Act), the Program may not be subject to discontinuation, i.e., scheduled to sunset. For this reason, the General Assembly should continue the Program indefinitely.

Revise the Colorado Work Share statute to bring it into compliance with federal law.

The Act made numerous changes to the federal criteria for work share programs. Consequently, Colorado must make numerous statutory changes to come into compliance with federal law. These changes are necessary in order to assure Colorado can continue to pay prorated unemployment compensation benefits to employees whose hours have been reduced.

Dental Advisory Committee

Continue the Dental Advisory Committee.

Oral health is important to the overall well-being of senior citizens. The Dental Advisory Committee (DAC) plays a role in awarding grants and establishing allowable reimbursements for dental services and appliances under the Old Age Pension Dental Assistance Program, an alternative to Medicaid. The DAC has not met since 2009 due to a lack of funding. However, funding was restored for fiscal year 12-13, thereby renewing the need for the DAC.

Division of Financial Services

Continue the Division of Financial Services for 11 years, until 2024.

One of the most important regulatory requirements, to ensure consumer protection, for institutions is the examination and audit process, which is generally conducted by both the Division of Financial Services and the Federal Deposit Insurance Corporation. Additionally, the Financial Services Board is authorized to impose discipline (enforcement actions) on institutions. All of the enforcement actions in fiscal years 06-07 through 10-11 were on credit unions. There were various types of enforcement actions, including the revocation of a state charter. The absence of regulatory oversight, particularly the examination and audit requirements, of institutions in Colorado would likely compromise consumer protection as well as Colorado's short-term and long-term economic stability. As such, the General Assembly should continue the Division of Financial Services for 11 years, until 2024.

Examining Board of Plumbers

Continue the Plumbing Practice Act (Act) for 11 years, until 2024.

A primary task of the Examining Board of Plumbers (Board) is to adopt and update the Colorado Plumbing Code (Code) to protect the public from germs and disease. The Code is the foundation of plumbing regulation in Colorado. It sets the standards for plumbing installations and is the centerpiece of the licensing program. The Division of Professions and Occupations inspects installations to ensure that they conform to the Code. A faulty installation may not only affect the premises and people in direct proximity but it may also affect the premises and people in the surrounding area. The Board also ensures that only qualified individuals become plumbers and remain eligible to perform plumbing in an ongoing manner through license renewal and disciplines licensee that violate the standards established in the Act.

Direct the Board to permit and inspect plumbing installations in all areas that do not have a permit and plumbing inspection program.

The Act is quite clear; it is the desire of the General Assembly that all plumbing be installed based on the Code. During the course of this sunset review, research uncovered multiple regional jurisdictions that do not enforce the Code as the minimum standard as required by the Act. Because of the inaction, the health, safety, and welfare of the citizens who live in those jurisdictions is threatened. If there is no local plumbing inspection authority some local jurisdictions mistakenly assume no inspections need to be made. This position is obviously counter to the aim of the Act and the wishes of the General Assembly to, "...safeguard the health of the people of this state." Therefore, the Board should inspect plumbing installations in all areas that do not have a permit and plumbing inspection program.

Food Systems Advisory Council

Continue the Food Systems Advisory Council (Food Advisory Council).

The Food Advisory Council has established objectives to foster a healthy food supply available to all Colorado residents while enhancing the state's agricultural and natural resources, encouraging economic growth, expanding the viability of agriculture and improving the health of communities and residents. Although the Food Advisory Council has made progress, there is still work for it to do, including continuing to refine the work that has been completed by its various subcommittees.

Hearing in Newborn Infants Advisory Committee

Continue the Hearing in Newborn Infants Advisory Committee (CIHAC).

The CIHAC is comprised of experts who provide best practice recommendations and guidance to hospitals, audiologists, early interventionists and physicians on the care of infants for screening, diagnosis and the early intervention processes. Because there are no statutes or rules that regulate newborn hearing screening in Colorado, the CIHAC's, *Guidelines for Infant Hearing Screening, Audiologic Assessment, and Intervention* provides necessary standards. The CIHAC continues to update the guidelines periodically.

Interagency Farm-to-School Coordination Task Force

Continue the Interagency Farm-to-School Coordination Task Force (Farm-to-School Task Force).

The Farm-to-School Task Force is the only group in Colorado addressing farm-to-school issues, including the implementation of programs. The Farm-to-School Task Force was tasked with developing and recommending policies and methods to implement farm-to-school programs. In its inaugural year, the Farm-to-School Task Force successfully began work to implement farm-to-school programs in Colorado. Specifically, the Farm-to-School Task Force has convened meetings and set in motion a “road map” to address issues for the successful implementation of the program. However, before this program is fully operational, there is still a great deal of work for the Farm-to-School Task Force to complete.

Licensing of Mortgage Loan Originators

Continue the licensure of mortgage loan originators and the Board of Mortgage Loan Originators (Board) for five years, until 2017.

The federal government requires all states to license mortgage loan originators according to the standards established in the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). The Consumer Financial Protection Bureau (CFPB) is the federal regulatory authority that oversees state licensure of mortgage loan originators. If the CFPB finds that a state is noncompliant with the SAFE Act, it has the authority take over the regulation of mortgage loan originators in that state. Regulation by the state is generally preferable to regulation by the federal government because it provides the state with more control over the regulatory program. A local regulator is also more accessible and responsive to the public and to the industry.

Amend the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (Act) so that license disqualifiers for criminal convictions comply with the SAFE Act.

Under the SAFE Act, states are required to deny a license to applicants whose licenses have been revoked in other jurisdictions or who have a history of felony convictions. Because the Act’s provisions regarding this issue are permissive rather than mandatory, the Act does not meet the minimum requirements for state licensure of mortgage loan originators as required by the SAFE Act.

Massage Therapy Practice Act

Continue the Massage Therapy Practice Act (MTPA) for nine years, until 2022.

Regulation of a profession or occupation performs two important functions that enhance consumer protection. First, regulation measures the competency of individuals to practice. Second, regulation exists to receive consumer complaints against practitioners. In those instances when a practitioner has violated the law, disciplinary action may be taken. Since the enactment of the MTPA in 2008, the Director received 54 complaints against massage therapists, 22 of which alleged sexual misconduct. During this same period, the Director took disciplinary action against 23 massage therapists. Thus, it appears that the regulation of massage therapists has accomplished what the General Assembly intended: restriction of entry into the occupation to those who meet prescribed requirements and creation of an effective complaint processing mechanism that results in discipline by the state of practitioners who violate the law.

Repeal registration requirements and implement licensing of massage therapists.

The General Assembly enacted the MTPA as a means to address two issues: prostitution and human trafficking. Since the MTPA was enacted, the Director of the Division of Professions and Occupations has received a number of complaints that have been classified as sexual misconduct but that have more to do with inappropriate draping. Although this is not a competency issue, it is a standard of care issue and, as such, is more indicative of the types of issues that arise in licensing, as opposed to registration, programs.

Noxious Weed Advisory Committee

Continue the Noxious Weed Advisory Committee.

Noxious weeds impact agriculture, wildlife, tourism, recreation, and real estate. Noxious weeds are aggressive, so they spread rapidly. They may poison livestock, compete with crops, displace deer and elk, compete with native plants, threaten rare and endangered species, and sometimes displace water flow important to certain ecosystems. Noxious weeds may even decrease the appraised value of property. The Noxious Weed Advisory Committee provides an essential function linking the Colorado Department of Agriculture to the various interests and expertise involved in managing noxious weeds in the state.

Occupational Therapy Practice Act

Sunset the Occupational Therapy Practice Act (OTPA) and restore title protection provisions to the Consumer Protection Act.

An important function of Colorado's sunset process is to eliminate unneeded regulation. In 2006, the Department of Regulatory Agencies conducted a sunrise review to determine whether regulation of occupational therapists was necessary to protect the public. That sunrise review found no evidence of public harm and recommended against regulation. Regardless, the General Assembly enacted the OTPA in 2008. After three years of regulation under the OTPA, there is still no evidence that occupational therapists have significantly harmed the public or engaged in incompetent practice. However, at the time of the 2006 sunrise review, the Consumer Protection Act contained provisions outlining the qualifications of those who could use certain occupational therapist-related titles. Arguably, these title protection provisions may have afforded some public protection. Therefore, the General Assembly should repeal the OTPA and restore to the Consumer Protection Act, those occupational therapist-related provisions that existed prior to the enactment of the OTPA.

Requirements and Procedures Regarding the Preparation of a Cost-Benefit Analysis of Proposed Rules

Continue the Cost Benefit Analysis (CBA) provisions of the State Administrative Procedure Act (APA) with modifications and repeal the requirement that the process be reviewed pursuant to section 24-34-104, C.R.S.

The rule review function conducted by the Department of Regulatory Agencies (DORA) was created to protect Colorado citizens and small business from unnecessary costs by requiring all state agencies to consider the economic impact their rules will have on small business in Colorado. It is important that Colorado agencies remain focused on the impact of their regulations, and consider viable alternatives to regulation, for Colorado to remain a business-friendly state. Therefore, the General Assembly should continue the CBA provisions and make improvements in the process. Because the sunset criteria were originally designed for the review of professional and occupational regulatory programs and boards, the review of section 24-4-103(2.5), C.R.S., should be removed from the sunset schedule.

Require that agencies submit draft rules and a CBA of rules that have a "significant" impact on small business, job creation, or economic competitiveness to the Secretary of State, and define "significant."

Rather than a DORA employee reviewing every rule to make a threshold determination whether a CBA should be performed in connection with a proposed rule, a more reasonable approach is to require the promulgating agency to make that determination earlier in the rulemaking process. If the agency determines, during the initial stages of developing rules with its stakeholder groups, that there is a significant negative impact, the most efficient and effective way to proceed would be to perform a CBA at that time. However, agencies should not be expected to perform a CBA in connection with every rule they consider. To encourage agencies to undertake CBAs in a more thorough and meaningful fashion, the statute should be revised to require a CBA only for rules with "significant impact," as defined by the General Assembly.

State Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors

Continue the State Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors and regulation for 11 years, until 2024.

There are very few practice-related complaints against architects, engineers, or land surveyors indicating that the practitioners are extremely competent. The overriding rationale for regulation is that there is a potential for catastrophic harm if these practices go unregulated. A major purpose of licensing programs is to determine the minimum qualifications necessary to protect the public from incompetence. The data also indicate that while regulation should continue, any increase to the qualifications for entry into one of the professions is not justified.

Allow professional engineers and land surveyors licensed in other states to offer services in Colorado.

The Architect Practice Act allows individuals who are licensed in other states and whose licenses are in good standing, to advertise their professional services in Colorado, as long as a Colorado-licensed architect is responsible for any work performed in the state. Extending this ability to engineers and land surveyors will create competition, promote choice, and present more options for consumers. In this age of mobility and portability of expertise it opens opportunities for different opinions, styles, and individual creativity. Still, all work will be performed under the provisions of Colorado law and by Colorado licensed professionals.

Water and Wastewater Facility Operators Certification Board

Continue the Water and Wastewater Facility Operators Board (Board) for seven years, until 2020.

Clean drinking water and the safe disposal of wastewater are essential to the public health and welfare. By assuring certified operators meet certain minimum requirements, taking disciplinary action against operators who violate the law, and promulgating rules governing the operation of water and wastewater facilities, the Board protects the health and welfare of Colorado citizens. For these reasons, the Board should be continued. To monitor progress on the issue of persistently low examination pass rates, the program should be continued for seven years, until 2020.

Allow the Board to exempt certain domestic wastewater facilities from the requirement that they operate under the supervision of a certified operator.

There are instances where domestic wastewater treatment facilities could be operated safely without operator in responsible charge (ORC) supervision. Granting the Board the authority to establish subsets of domestic wastewater facilities that are not required to operate under ORC supervision would relieve the regulatory burden on small businesses and allow the Water Quality Control Division to focus its enforcement efforts on facilities that truly do require ORC supervision to operate safely. Exempted facilities would remain under the regulatory authority of Colorado Department of Public Health and Environment and facility owners would still have to obtain applicable wastewater discharge permits, meet reporting requirements, and ensure the facilities are operated in compliance with all applicable state and federal laws.

Wildlife Habitat Stamp Committee

Continue the Wildlife Habitat Stamp Committee (Stamp Committee).

The Stamp Committee was created to review proposals for the protection of wildlife habitat and to provide access to wildlife habitat. It successfully completes this task each year, and a significant number of the proposals selected by the Stamp Committee are approved by the Parks and Wildlife Commission.

Youth Advisory Council

Continue the Youth Advisory Council (COYAC).

Although COYAC's positions have not always prevailed at the General Assembly or other bodies COYAC has addressed, it is clear that COYAC is fulfilling its mission of providing an avenue for law makers and decision makers to hear the voices of Colorado's youth. As such, continued input should prove invaluable to policymakers well into the future.

Any interested party may provide input on reviews by contacting DORA directly at 303-894-2992 or online at http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.



DORA is dedicated to preserving the integrity of the marketplace and is committed to promoting a fair and competitive business environment in Colorado. Consumer protection is our mission.

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